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**U.S. House of Representatives**  
**Committee on Financial Services**  
2129 Rayburn House Office Building  
Washington, DC 20515

May 10, 2005

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ROBERT U. FOSTER III  
STAFF DIRECTOR

The Honorable Alan Greenspan  
Chairman  
Board of Governors of the Federal Reserve System  
20th St. and Constitution Avenue, NW  
Washington, DC 20551

Ms. Julie L. Williams  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219

The Honorable Donald E. Powell  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

Re: Joint Proposed Revisions to Community Reinvestment Act Regulations

Dear Chairman Greenspan, Acting Comptroller Williams and Chairman Powell:

We commend you for the thoughtful efforts in bringing forth the proposed joint amendments to the Community Reinvestment Act (CRA) regulations. We are pleased that not only are you acting together in making this proposal, but it is also quite clear from the proposal that you have given serious consideration to the comments that you have received over the past year on your earlier CRA proposals. We appreciate the spirit in which you have undertaken the difficult task of addressing the difficult task of balancing the concerns of financial institutions about CRA compliance with the concerns of community groups that the needs of low- and moderate-income persons and communities continue to be met by those institutions.

The proposal replaces the application of the service and investment tests for banks between \$250 million and \$1 billion in assets (referred to in the proposal as "intermediate small banks") with a community development test that combines the elements of the two tests, thereby giving intermediate small banks more flexibility to meet the particular needs of their communities. The proposal appropriately requires these institutions to receive "satisfactory"

ratings on both the lending test, which continues to apply to them, and the community development test, in order to receive an overall rating of “satisfactory.”

We want to address a number of substantive concerns that we have concerning the proposal.

### **Collection and Dissemination of Data on Small Business, Small Farm and Community Development Lending is Important**

The proposal to eliminate the requirement that intermediate small banks collect and disseminate CRA data on small business, small farm and community development lending would eliminate a very important tool for evaluating how these banks are serving the credit needs of their communities. These banks play a significant role in many communities, both urban and rural, but are particularly important outside urban areas. In 2004, intermediate small banks controlled 25 percent or more of total bank assets in rural areas in 33 States.

There are not adequate substitutes for this data. The proposal that agencies can sample loan files as part of CRA examinations and report on how well a particular bank is meeting the needs of its community, does not address the problem that public analysis of data on a State, regional or national basis will not be possible. While data from the larger banks will still be available, as noted above, in many States significant portions of data will no longer be available. In Idaho and Massachusetts, for example, they control over 80 percent of the total bank assets in rural areas. Your proposal would eliminate that data collection.

The elimination of the data would mean that there would be no data for the peer group of intermediate small banks by which any particular intermediate small banks could be compared. and there would be no data for the particular bank by which communities could, for themselves, measure whether the bank is meeting the small business and farm needs of the community.

These banks would also no longer be required to submit Home Mortgage Disclosure Act (HMDA) data for their lending in non-metropolitan areas because the HMDA regulation requires that banks that submit CRA lending data on small business and farm lending must collect the location of property outside metropolitan statistical areas and metropolitan divisions in which the bank has a home or branch office. If you eliminate the small business and farm lending requirement then you also eliminate the HMDA reporting requirement for non-metropolitan areas.

We recognize that financial institutions have concerns about the costs and efforts required to assemble and disclose the data. We suggest that your efforts should focus on ways to reduce those costs, such as through joint agency efforts such as the geocoding technology available through the Federal Financial Institutions Examination Council, or through other efforts with the industry to develop other appropriate less costly technology. The value of the data to the affected communities, however, far outweighs the costs associated with its collection.

### **Branches and Deposit Services Need to Remain an Explicit Part of the Service Test**

Branches remain the single most important means of delivering banking services to communities. The current CRA regulation recognizes that and includes the distribution of branches as a part of the service test. The proposal removes the explicit reference to branches and deposit services, as part of the service component of the community development test. We urge that an explicit reference to branches be made part of the community development test for intermediate small banks.

In many low-income communities, the predominant “financial services” providers are the storefront operations of payday lenders, check cashers and subprime lenders. The number of these outlets have grown at a remarkable pace over the past decade, with the number of payday lenders and check cashers growing from 2,000 in 1996 to 22,000 in 2003. The presence of bank branches in these communities helps offer consumers alternatives to these high-cost services and enables them to become users of mainstream financial services. The competition that banks offer to high-cost lenders and service providers best occurs through branches.

The Discussion that accompanies the proposal indicates that the agencies will take into account “bank services intended primarily to benefit low- and moderate-income people, such as low-cost bank accounts and banking services such as low-cost remittance services,” yet there is no mention of how these services would be delivered to those persons. Not only is it appropriate for these services to be included in the regulatory definition of “community development,” but it is vital that the definition include a reference to branches.

We are also concerned that excluding any specific reference to branches from the community development test may be taken by banks as an indication that the agencies no longer believe that CRA requires banks to serve low- and moderate-income communities through branches. We are worried that such a possible interpretation, could undermine the success that CRA has played in assuring an equitable distribution of branches in those communities. A National Community Reinvestment Coalition study of the location of branches in Massachusetts showed that banks with “satisfactory” and “outstanding” CRA ratings placed branches in low- and moderate-income communities in proportion to the number of those communities in their assessment areas, while those banks with “low satisfactory” or “needs to improve” ratings did not. Without branches as an explicit factor to be considered, the agencies may no longer take these disparities into account in your CRA evaluations.

### **Community Development Lending and Investment**

The CRA is designed to require that banks serve the community development needs through services, lending or investments. Having both a lending test and a community development test for intermediate small banks is consistent with that approach, and providing those banks with the flexibility to meet their particular communities’ need is appropriate. The CRA recognizes that local banks should serve their communities and are not required to serve communities outside their areas.

As we noted in an October 1, 2004 comment letter on the FDIC's CRA proposal that was also signed by more than 20 of our colleagues, there is room for encouraging institutions to make complex investments, such as some for multi-family affordable housing, that currently do not qualify for CRA credit. While that issue is not addressed directly in the proposed changes to the regulation, the accompanying Discussion notes that "banks may have made or purchased investments that may not be meaningful or responsive to the needs of their community, whereas additional lending or provision of services by the bank could have been more responsive to local community development needs." The flexibility offered by the community development test, if accompanied by expanding the range of appropriate activities that qualify for CRA credit, can benefit low- and moderate-income communities if it allows banks to focus on meeting the needs of the community, without regard to the form by which that need is met. For example, if a community has a need for low-income housing, it should not matter for purposes of CRA if a bank meets that need through direct loans, purchasing bonds that provide the funds, or through grants that provide needed capital for the housing, so long as the need is met.

The crucial point of CRA is that if there is a community need, banks have an obligation to meet it. The OTS position adopted in January 2005 that thrifts can fulfill their CRA commitments entirely through lending is unsupported by any evidence that there is no need for services or investments in low- or moderate-income communities. The joint proposal recognizes that all such communities have such needs, but also acknowledges that there may be different levels of particular needs in different banks assessment areas, and provides the necessary flexibility for intermediate small banks.

### **Evidence of Discriminatory or Illegal Credit Practices**

We commend you for proposing to include evidence of illegal and discriminatory credit practices as a adverse factor in CRA evaluations. In particular, we support that the fact that the proposal states that the violations to be considered are explicitly "not limited to" the laws that enumerated. The CRA requires banks to meet the credit needs of their communities; that clearly requires them to do so in a way that it legal, safe and sound, which discriminatory or illegal credit practices are not.

We support the application of this standard to lending that occurs both inside and outside a bank's assessment area. While the proposal would apply to affiliates' loans that the bank has requested by included in its evaluation, we recommend that it apply to all loans of affiliates, not just those selected by a bank. If a bank can decide when the activities of an affiliate are helpful to its CRA evaluation, it should also expect that any illegal or discriminatory lending activities of its affiliates will likewise be considered.

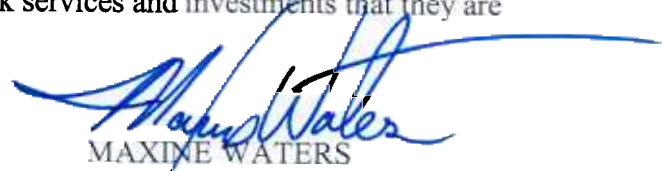
### **Conclusion**

Again, we appreciate your efforts to bring forth a balanced, and unified, proposal to amend the CRA regulations. While it is not as strong in regard to low- and moderate income community interests as we would prefer, as we noted in our comments above, it also does not give banks all that they would like. We urge you, as you move toward a final regulation, to

assure that the CRA continues to be applied in a manner that gives low- and moderate-income individuals and communities access to the loans, bank services and investments that they are entitled to receive.

  
BARNEY FRANK

  
LUIS V. GUTIERREZ

  
MAXINE WATERS

  
BERNARD SANDERS